

MICHAEL J. JAMES,	:	Order Docketing Appeal and Affirming
Appellant	:	Decision
	:	
v.	:	
	:	Docket No. IBIA 00-98-A
ACTING ROCKY MOUNTAIN	:	
REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	July 28, 2000

Appellant Michael J. James seeks review of a June 21, 2000, decision issued by the Acting Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director denied Appellant's request for BIA general assistance. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. According to the Regional Director's decision, Appellant applied for general assistance from the Fort Peck Agency, BIA, in January 2000.

The Superintendent of the Fort Peck Agency denied Appellant's application. On appeal, the Regional Director affirmed the Superintendent's decision, finding that Appellant did not meet the eligibility requirements for BIA general assistance as set out in 25 C.F.R. §§ 20.20 and 20.21. Appellant appealed this decision to the Board. After reviewing Appellant's notice of appeal and the Regional Director's decision, the Board ordered Appellant to show that he met the eligibility requirements in 25 C.F.R. §§ 20.20 and 20.21. The Board received Appellant's response on July 20, 2000. The Board concludes that this appeal can be addressed on the materials presently before it.

BIA's general assistance program is governed by regulations in 25 C.F.R. Part 20. Subsection 20.20(a) provides in pertinent part: "(a) Basic eligibility conditions shall be: \* \* \* (2) the applicant must reside on a reservation; or (3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area." Section 20.21 sets out additional eligibility requirements for persons applying under the general assistance program. Subsection 20.21(i)(1) provides: "An applicant or recipient must actively seek employment, including use of available tribally

or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance.” The subsection then lists ten circumstances under which an individual will be excused from the requirement of seeking and accepting local employment.

Appellant argues that the BIA regulations are “constitutionally offensive” (Opening Brief at 2), and that the decision violated the Fifth Amendment. The Board interprets this argument as a challenge to the general assistance regulations. The Board has stated on numerous occasions that it is not a court of general jurisdiction, but instead has only that authority delegated to it by the Secretary of the Interior. It has not been delegated authority to declare a duly promulgated Departmental regulation invalid. See, e.g., Tanana Chiefs Conference, Inc. v. Acting Associate Alaska State Director, Bureau of Land Management, 33 IBIA 51, 53 (1998), and cases cited therein. The Board lacks jurisdiction to consider this argument.

Appellant contends that he is eligible for BIA general assistance because he resides in a Federal enclave. Appellant resides in the Federal Correctional Institution in Edgefield, South Carolina. Under 25 C.F.R. § 20.20(a), an applicant must reside on or near a “reservation.” 25 C.F.R. § 20.1(v) defines “reservation” to mean “any federally recognized Indian tribe’s reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.” The Board holds that a Federal prison is not a “reservation” within the meaning of 25 C.F.R. §§ 20.1(v) and 20.20(a).

Appellant did not discuss the question of his nonavailability for local employment. The Board finds that Appellant has failed to show that he is excused from meeting the requirements of 25 C.F.R. § 20.21.

The Board concludes that Appellant has not shown that he meets the eligibility requirements for BIA general assistance. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Regional Director’s June 21, 2000, decision is docketed, and that decision is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge